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September 12, 2001

Magalie R. Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: CC Docket No. 00-251
In the Matter of Petition of AT&T Communications of Virginia, Inc., TCG Virginia, Inc., ACC National Telecom Corp., MediaOne of Virginia and MediaOne Telecommunications of Virginia, Inc. for Arbitration of an Interconnection Agreement With Verizon Virginia, Inc. Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996

Dear Ms. Salas:

Enclosed for filing on behalf of AT&T and its affiliates listed above, please find an original and 3 copies of AT&T's Opposition to Verizon's Renewed Motion to Dismiss Certain Issues. While yesterday was the filing date for this motion, we assume that, in light of yesterday's events, this Opposition will be accepted today.

Thank you for your attention to this matter. Should you have any questions, please do not hesitate to call.

Sincerely yours,

Mark A. Keffer

cc: Service List
Enclosures

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
Petition of AT&T Communications	)	
of Virginia, Inc., Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act, for Preemption	)	**CC Docket No. 00-251**
of the Jurisdiction of the Virginia	)	
State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon Virginia, Inc.	)	

AT&T's OPPOSITION TO VERIZON VIRGINIA, INC.'S RENEWED MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO DEFER CONSIDERATION OF CERTAIN ISSUES

Verizon's Renewed Motion to Dismiss ("Motion") should not be granted. Some of the issues Verizon has identified in the new Motion are clearly ripe for arbitration under any standard, because they are necessary to implement established Commission requirements. Moreover, all of the issues AT&T has raised are important competition-affecting matters. And as AT&T showed in its opposition to Verizon's initial dismissal motion, the Commission, acting in lieu of the Virginia SCC, is not only allowed to act under federal law but also under Virginia law, reviewing the local competitive situation as the State commission is allowed (and expected) to do.

AT&T recognizes that the Commission has expressed an intention not to go beyond "existing" law in deciding issues in this arbitration, at least at this time. But even Verizon must acknowledge that the underlying legal requirements relating to the issues that are currently being litigated in other proceedings are likely to be decided in the near future. Therefore, it would be inappropriate to dismiss any of these issues outright.

Rather, to the extent the Commission elects not to arbitrate any of these individual matters at this time, it should merely defer the hearing and decision on such matters until shortly after they are decided in proceedings of general application.

AT&T (and WorldCom on Joint issues) should not be required to wait while Verizon benefits from the delays that could result if it can require new entrants to jump through additional procedural hoops before the Commission addresses them after the underlying legal issues have been decided in other proceedings. Therefore, to the extent the Commission decides not to address any of the identified issues in the initial phase of this proceeding, it should leave this docket open so that the operational details of the forthcoming decisions can be promptly implemented in appropriate interconnection agreement language.[1]

AT&T responds below to each of the individual issues raised in Verizon's motion:

1. Availability of "New" UNE Combinations that Verizon Ordinarily Combines for Itself (Issue III-6)

Contrary to Verizon's assertion, AT&T is not asking the Commission to challenge the Eighth Circuit or to rewrite its current rules on UNE availability. The Eighth Circuit vacated Rules 315(c)-(f), but AT&T is not relying on those vacated rules in this arbitration. Rather, AT&T simply asks the Commission to clarify that the "currently combine[d]" standard, as used in the Commission's currently effective Rule 315(b), includes such UNEs as are ordinarily, commonly or regularly combined in Verizon's

[1] It would also appear that the possible outcomes of pending proceedings are clear enough that the Commission could decide here the appropriate contract language that would become effective promptly upon the issuance of the orders in such proceedings. AT&T would support such a process.

network, whether or not they are actually combined for the particular customer or location that AT&T seeks to serve.

This is not a stretch of the currently effective Commission rules. The Commission's rule on combinations must be read as a whole, and not simply as truncated by the Eighth Circuit's vacation of sub-parts (c) through (f). Rule 315 was clearly intended to encompass the entire universe of UNE combinations. Rule 315(a) imposes a positive duty on Verizon to provide UNEs "in a manner that allows requesting telecommunications carriers to combine such network elements in order to provide a telecommunications service." Rule 315(c) by its own terms applied to UNE combinations that "are not ordinarily combined" in an ILEC's network. Thus, Rule 315(b) logically would apply to all UNE combinations that **are** ordinarily combined in an ILEC's network. This is the issue that AT&T asks the Commission, acting as a state arbitrator, to resolve in this arbitration.

WorldCom makes essentially the same point in its Opposition when it states that "WorldCom's argument, instead, is that its combination language (permitting "ordinarily combined" but not "novel" combinations) is permitted under Rule 315(a) and (b) and does not permit the kinds of novel combinations that would have been permitted under Rules 315(c)-(f)."[2]

This is a reasonable interpretation of the Commission's language and intent. The Georgia Commission has found that the proper reading of "currently combines" means network elements that are "ordinarily combined within their [BellSouth's] network, in the

[2] WorldCom's Opposition to Verizon's Renewed Motion to Dismiss, at 3.

manner in which they are typically combined."[3] The Tennessee and the Michigan commissions have interpreted the Commission's rules the same way.[4] These state commissions appear to view this interpretation as consistent with the Commission's existing rules, and also as serving the overarching pro-competitive objectives of the Act. Moreover, the U.S. Court of Appeals for the Ninth Circuit has held that ILECs are obliged to provide CLECs with combinations of UNEs that are ordinarily combined by the ILEC.[5]

Even if AT&T's issue were to be viewed as going beyond what the Commission's existing rules provide – which it does not -- the Commission stands in the shoes of the Virginia State Corporation Commission in this arbitration and as such, the Commission is fully empowered to resolve the issues as is the Virginia State Corporation Commission. The Commission's regulations are the floor, not the ceiling, of what a state commission may require in regard to the UNEs and UNE combinations that an ILEC should be obligated to provide, in order to foster competition in a state. If the Commission finds that Virginia would be best served by requiring Verizon to provide UNEs that are currently ordinarily combined, although not necessarily combined in service to a particular customer, the Commission may so order in this arbitration. Like the Georgia,

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3 Georgia Public Service Commission, *In re: Generic Proceeding to Establish Long-Term Pricing Policies for Unbundled Network Elements*, Docket No. 10692-U (Feb. 2, 2000) ("Georgia UNE decision").

4 "I move to define the term "currently combines" to include any and all combinations that BellSouth currently provides to itself anywhere in its network thereby rejecting Bellsouth's position that the term means already combined for a particular customer at a particular location." Tennessee Regulatory Authority, Intermedia/BellSouth Arbitration Hearing, Transcript at 7-8. Also, Michigan Public service Commission, *In the matter, on the Commission's own motion, to consider AMERITECH MICHIGAN's compliance with the competitive checklist in Section 271 of the federal Telecommunications Act of 1996*, Case No. 12320,Opinion and Order (Jan. 4, 2001), at 9-10.

5 *See US West Communications v. MFS Intelelet, Inc.*, 193 F.3d 1112, 1121 (1999), cert. denied, 120 S. Ct 2741 (2000); *MCI Telecomms. v. U.S. West*, 204 F.3d 1262, 1268 (9th Cir. 2000)

Tennessee and Michigan commissions, the Commission should rule in this arbitration that the Commission's current rules should be interpreted consistent with the pro-competitive objectives of the Act.[6]

In any event, however, the Commission cannot simply dismiss an issue that has properly been brought for arbitration by AT&T without examining the parties' proposed interconnection agreement language and selecting between the proposals. The differences in language are squarely before the Commission regardless of whether or not the Commission is inclined to rule on the legal interpretations that AT&T -- and WorldCom -- present. AT&T's proposed language, as set forth in the Direct Testimony of C. Michael Pfau, addresses AT&T's rights and Verizon's obligations to combinations of UNEs under existing law and the Commission's Rules 315(a) and (b) regardless of that legal issue. The AT&T language pertains to AT&T's rights to combine UNEs on its own. Specifically as to the legal issue, the AT&T language provides as follows:

> For those combinations requested by AT&T that Verizon asserts it does not ordinarily combine, Verizon may elect either to provide the combination, subject only to charges for the direct economic cost of providing the requested combination, or provide AT&T, or its duly authorized agent, with the access necessary for AT&T both to make the combination and to deliver service to its customer(s), in a timely manner.

There is nothing in AT&T's language that remotely suggests that the Commission in any way go against the Eighth Circuit's decision on Rules 315(c) through (f) that is currently

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(requiring ILECs to provide "new" combinations) contra Iowa Utils. Bd v FCC, 219 F.3d 744, 759 98th Cir. 2000), cert. granted.

[6] Verizon argues that the Commission has already ruled that it would not act to exercise the powers of the Virginia Commission in this arbitration. Direct Testimony of Detch, *et al.* at 5. But Verizon's own cites to the transcript belie that claim, for it shows only that the Chief of the Common Carrier Bureau is "disinclined to exercise that authority." *Id.* With all due deference to the Bureau, AT&T is not abandoning its right to argue to the Commission that the Commission is empowered to exercise the Virginia Commission's authority, and should do so if it believes it necessary to reach a proper result on this issue.

under review by the Supreme Court. For this reason alone, the Commission cannot simply dismiss Issue III.6, as Verizon would have it.

If notwithstanding, the Commission is of a mind to not clarify the meaning of "currently combined", AT&T suggests that the Commission defer rather than dismiss only this narrow issue in this docket until the Supreme Court acts, at which time AT&T should be permitted to arbitrate (if necessary) the terms of appropriate implementing contract language promptly before this Commission, without the need to seek an additional preemption order. Even if the Commission elects to follow the path of deferring such clarification, it should not simply reject the entirety of language that AT&T proposes for section 11.7.4. Verizon has not identified any conflict present in the language with existing law, or Verizon's narrow interpretation of the 8th Circuit Ruling, for the primary reason that there is none. Instead the language clarifies, among other things, Verizon's obligations to permit and support AT&T's efforts to combine and connect elements when Verizon refuses to do so. As such it covers obligations that Verizon has attempted to ignore. Indeed, ruling in Verizon's favor here and deferring the entirety of the issue would only assure ambiguity in the interconnection agreement.

2. Termination Liability for Conversion of Services to UNEs (Issue III-7.C)

Verizon (at 9) itself quotes the Commission's position here, *i.e.*, that "substitution of unbundled network elements for special access would require the requesting carrier to pay any *appropriate* termination penalties required under volume or term contracts" (quoting *UNE Remand Order* n.985; emphasis added). But AT&T's issue is the exact question posed in the Commission's statement, i.e., what is the "appropriate' amount of termination penalty in such cases, given the fact that the CLEC (unlike the customer in an

ordinary case) is using and paying for the use of the *exact same facilities*. This issue should not be dismissed or deferred and should be arbitrated pursuant to the current schedule.

3. Provision of Splitters by Verizon (Issue III.10.B.7)

AT&T is willing to defer this issue until the Commission acts on this issue in a general docket, as it has twice promised to do in the last year.

4. CLEC-to-CLEC Cross Connects (Issue III.10.B.8) and Collocation of Packet Switches (Issue III.B.B.10)

AT&T agrees with Verizon that the legal principles underlying these issues have been addressed in the recent *Advanced Services Remand Order*. But that does not end the matter. It is now time to assure that there is appropriate contract language to *implement* these obligations. In AT&T's rebuttal testimony of C. Michael Pfau (at 1-4), AT&T proposed appropriate and specific contract terms that take the Commission's order into account. If Verizon agrees with that language, there is obviously no need to arbitrate these issues any further. However, as with much of Verizon's other proposed contract language, AT&T is not willing to accept the general and non-specific language of Verizon's Section 13.1, which is referenced in Verizon's Motion (at n.15). If Verizon opposes any of AT&T's specific and straightforward language on these issues, it should be required to come forward *now* with specific reasons why AT&T's proposed provisions should not be accepted. Therefore, these issues should not be dismissed unless Verizon voluntarily agrees to accept AT&T's proposed contract provisions.

5. Access to NGDLC Loop Architecture (Issue V.6)

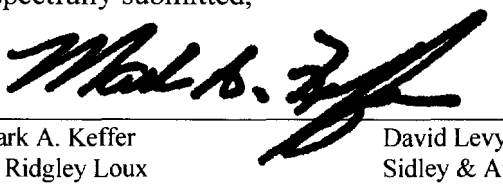
The record is sufficient to enable the Commission to rule on this issue here. However, in light of the fact that the Commission has received extensive briefing on

these issues in two full rounds of comments in an ongoing proceeding in CC Dockets 96-98 and 98-147 (the "*Advanced Services Proceeding*"), so that the issue is ripe for decision in the short term, AT&T would not oppose deferring arbitration of this issue until after the Commission issues a ruling in that proceeding. The Commission should make clear, however, that AT&T may pursue this issue promptly as an arbitration matter as soon as it issues its order in the *Advanced Services Proceeding*.

CONCLUSION

Verizon's motion to dismiss should be denied in its entirety. Issues III.6 and III.7-C should be arbitrated in the current phase of this proceeding, as well as Issues III.10.B.8 & 10 if Verizon does not agree with AT&T's proposed contract language. AT&T would not oppose deferral of Issues III.10.B.7 and V.6, provided that such issues may be arbitrated, if needed, promptly after decisions are issued in the referenced proceedings of general application. These issues are important to AT&T and other CLECs, and should not be allowed to languish once the legal principles underlying them have been resolved.

Respectfully submitted,



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	)	

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of September, 2001, a copy of the Opposition to Verizon's Renewed Motion to Dismiss Certain Issues filed on behalf of AT&T Communications of Virginia, Inc. and its affiliates listed above, was sent via hand delivery, Federal Express and/or by email to:

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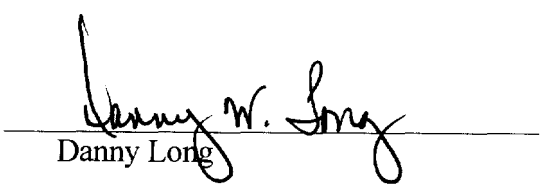

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